THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on :29.10.2007

+ **IA. No. 8352/2007 in CS(OS) 1094/2004**

VIJAI KUMAR SAWHNEY ... Plaintiff

- versus -

INDER DEV SAWHNEY & OTHERS ... Defendants.

Advocates who appeared in this case:
For the Plaintiff : Ms Sunita Bansal with Ms Priya Bansal.
For the Defendants : None.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. The issue involved in this application is with regard to the question of stamp duty on the compromise decree dated 09.01.2006. This suit was filed for partition of joint property and pursuant to a compromise and /or settlement between the parties, an application under Order 23 Rule 3 being IA. No. 254/2006 was filed in respect of the suit property bearing No. C-153 Defence Colony, New Delhi – 110024. The

parties had entered into a Memorandum of Understanding on 18.01.2005 wherein it was specifically stated that as per the desire of Mr Vijai Kumar Sawhney and his son to sever their rights and ties with the HUF and with a view to settle all the disputes raised in the suit, the parties had arrived at an amicable settlement and that they were signing and executing the said Memorandum of Understanding individually, collectively as well as in their capacity as coparceners of the HUF to record the terms of settlement already agreed upon, in writing to avoid any future dispute. Clause 5 of the Memorandum of Understanding also indicated that the second party (Vijai Kumar Sawhney) agrees and undertakes to execute all the requisite documents in respect of the immovable properties, particularly, with regard to the relinquishment deeds in respect of the said property and to get the documents registered before the appropriate authorities to effectuate the settlement agreed upon between the parties.

2. On the basis of the Memorandum of Understanding, the application under Order 23 Rule 3 was jointly filed by the parties. Paragraph 2 of the said application also indicated that during the pendency of the suit, the parties had amicably settled their disputes and

had recorded the terms of the said settlement already agreed upon in the Memorandum of Understanding dated 18.01.2005. Paragraph 4 of the application stated that the plaintiff has voluntarily and willingly desired to irrevocably and for ever absolutely and unconditionally, inter alia, relinquish all his rights, title and interest in the HUF in question and in all its movable and immovable assets including the said property at Defence Colony in favour of the remaining coparceners on payment of Rs 46 lacs, receipt of which was acknowledged by the plaintiff.

3. After the passing of the decree, the question was raised by the Registry with regard to the stamping of the same. As per the registry, the plaintiff has relinquished his share in the suit property after recovering an amount of Rs 46 lacs from the defendants and, therefore, the decree is liable to be stamped in accordance with Article 45 of the Indian Stamp Act, 1899 read with Article 15 thereof. According to the registry, the stamp duty on the separated share @ 2% is payable on the decree and that the amount of stamp duty would come to Rs 92,000/-.

4. The learned counsel for the plaintiff submitted that no stamp duty whatsoever would be payable on the decree inasmuch as the decree

merely records an oral partition which had been entered into between the parties. To support this contention, she placed reliance on two decisions of this court. The first decision was of a learned Single Judge of this Court in the case of ***Rajinder Kumar v Iqbal Singh and Others : AIR 2003 Delhi 441*** and the second decision was of the Division Bench of this court in the case of ***Nitin Jain v Anuj Jain & Ors (FAO (OS) 37/2007) decided on 19.04.2007***. In ***Rajinder Kumar*** (supra), a learned Single Judge of this court was examining the question of stamp duty on a partition decree. In that case an oral partition had taken place prior to the passing of the decree and in that context, the learned Judge observed as under :

> "7. The partition or division of the properties, movable as well as immovable, having already taken place by way of an oral partition on Ist of April, 2000, the Family settlement (Annexure P1) or Disclaimer Agreement could not be taken as instrument of partition as contemplated under Section 2(15) of the Act. The Partition Decree that was passed in the suit simply took note of an existing fact of partition in pursuance of compromise between the parties and it did not by itself effect the partition of the properties to make it fall within the definition of instrument of partition.

5. In ***Nitin Jain*** (supra), a similar question came up for consideration before the Division Bench wherein the Division Bench observed as under :

"9. In view of the legal position explained above, it follows that a decree of partition is an instrument of partition and therefore is required to be stamped under Schedule 1 of Article 45 r/w Section 2(15) of the Stamp Act. However, an oral family settlement dividing or partitioning the property is not required to be stamped. Similarly, a memorandum recording an oral family settlement which has already taken place is not an instrument dividing or agreeing to divide property and is therefore not required to be stamped.

10. Relevant paragraphs of the application for compromise and the orders passed by the Court have been quoted above. In the application it is specifically stated that the parties had entered into an oral family settlement and had distributed movable and immovable properties. In fact it is further stated that the parties had already been put in possession of the respective portions and the possession had been taken over. The compromise application merely records the oral family settlement to avoid any ambiguity. Therefore, in this case the Court was not required to pass any decree of partition but only declare the existing factual position on the date when the compromise application was filed, that the parties had entered into an oral family settlement and had partitioned and separated the properties amongst themselves. It was a decree of declaration that there exists an oral family settlement that was passed and no decree that amounts to an instrument of partition under Section 2(15) of the Stamp Act was passed. Thus, the objection raised by the Registry that the appellant and other co-owners must furnish valuation report and pay stamp duty is not correct and legally tenable. However, it is clarified that in case the appellant or any of the co-sharers want to have a decree of partition prepared by the Registry, they shall have to file valuation report and also pay stamp duty."

6. The two decisions referred to by the learned counsel for the

defendant No.1 would not be of any assistance to her. This is because the facts of the two cases are entirely different from the facts of the present case. In those cases, the oral family settlement dividing or partitioning the property had already been taken place and the decree merely declared the existing factual position on the date when the compromise application was filed. In the present case, the oral partition has not taken place prior to the passing of the decree and the partition would take effect on the date on which the decree is passed. In another words, in the two cases cited by the learned counsel, the partition had already been taken place prior to the decree whereas in the present case the partition took place upon the passing of the decree. That is the distinction which had to be borne in mind. Accordingly, the stamp duty would be payable under Article 45 read with Section 2(15) as well as Article 15 of the Indian Stamp Act, 1899 as applicable to Delhi.

7. It was further contended by the learned counsel that the rate at which the registry calculated the stamp duty is also not in accordance with Article 15. According to her, the rate ought to be 1/2 % and not 2% as indicated by the registry. The learned counsel is not correct in her submission. This is so because the rates as applicable in Delhi have to be

seen. By virtue of the Indian Stamp (Delhi Amendment) Act, 2001 new Schedule 1-A has been substituted in the Indian Stamp Act, 1899 as in force in the National Capital Territory of Delhi. In terms of Article 45 thereof the proper stamp duty in respect of an instrument of partition has been specified as the same duty as a Bond No.15, for the amount of the value of the separated share or shares of the property. Article 15 specifies the proper stamp duty as "2% and 0.5% on bond issued by the local authority". The decree in question is certainly not a "bond issued by the local authority". Therefore, the applicable rate would be 2%.

8. It is made clear that the decree passed in this case is a decree of partition and by itself constitutes an instrument of partition as indicated in Section 2(15) of the Stamp Act. No further document is necessary for bringing about the partition.

With these directions, this application stands disposed of.

BADAR DURREZ AHMED
(JUDGE)

October 29, 2007
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